IN THE SUPREME COURT OF THE STATE OF OREGON

HABITAT FOR HUMANITY OF THE MID-WILLAMETTE VALLEY, Plaintiff-Appellant, v. DEPARTMENT OF REVENUE, State of Oregon, Defendant-Respondent, and MARION COUNTY ASSESSOR, Intervenor-Respondent.	Tax Court No. 5234 SC S063542

RESPONDENT DEPARTMENT OF REVENUE'S ANSWERING BRIEF

Direct Appeal from the Judgment of the Oregon Tax Court
Honorable Henry C. Breithaupt, Judge

Continued…

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RESPONDENT DEPARTMENT OF REVENUE'S ANSWERING BRIEF

STATEMENT OF THE CASE

Respondent, Department of Revenue, (Department) accepts appellant Habitat for Humanity's (Habitat) statement of the case as adequate for appellate review as supplemented by additional facts set out in argument below.

Summary of Argument

ORS 307.130(2)(a) exempts from taxation only such real property as is "actually and exclusively occupied or used" in the charitable work carried on by a charitable institution. Habitat for Humanity, a charitable institution whose charitable purpose includes acquiring vacant land for future use as affordable housing, appeals from a judgment of the Tax Court granting the Department's cross-motion for summary judgment and concluding that a parcel of vacant land Habitat holds for future use was not entitled to exemption from taxation under ORS 307.130(2)(a). This court should affirm.

The text and context of ORS 307.130(2)(a), as well as this court's decisions construing that statute, demonstrate that the phrase "actually and exclusively occupied or used" means, at a minimum, that vacant land a charitable institution seeks to exempt from taxation must be occupied by a building under construction. Here, because Habitat had not yet begun construction, the Tax Court correctly concluded that the land did not qualify for exemption from taxation under ORS 307.130(2)(a).

ANSWER TO ASSIGNMENT OF ERROR

The tax court correctly denied Habitat's motion for summary judgment and correctly granted the Department's cross-motion for summary judgment.

Preservation

Habitat preserved its argument.

Standard of Review

On appeal from a grant of summary judgment when there are no disputed issues of fact, this court reviews for errors of law. ORS 305.445. *Tektronix, Inc. v. Dept. of Revenue*, 354 Or 531, 533, 316 P3d 276 (2013).

ARGUMENT

A. Introduction

Habitat for Humanity is a charitable institution and its charitable purpose includes acquiring "vacant land for future use to build affordable housing." (ER 21).[1] On September 14, 2012, in service of that charitable purpose, Habitat acquired a parcel of vacant land for future development. (ER 20, 21). As of July 1, 2013, the start of the tax year at issue, Habitat had not begun construction and the land remained vacant.[2]

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[1] The Department refers to Habitat's excerpt of record in its opening brief to this court.

[2] On September 26, 2013, Habitat applied for a building permit to construct a residential dwelling on the property. (ER 21). Habitat obtained that permit on October 17, 2013. (ER 21).

This case presents a question of statutory construction, controlled by a decision of this court decided over forty years ago: is vacant land acquired and held by a charitable institution for future use exempt from taxation as land "actually and exclusively occupied or used in the * * * charitable * * * work carried on by such institution" under ORS 307.130(2)(a)? The answer is no.

In *Emanuel Lutheran Charity Bd. v. Dept. of Revenue*, 263 Or 287, 292, 502 P2d 251 (1972), this court held that "land merely being held for future use is not being actually occupied or used" under ORS 307.130. The pertinent text of ORS 307.130 has not changed since 1972, and Habitat does not ask this court to overrule *Emanuel Lutheran*. This court should adhere to its holding in *Emanuel Lutheran*, and should affirm the judgment of the Tax Court because land held by a charitable institution for *future* use is not land that is *actually* "occupied or used" in the charitable work carried on by the institution.

B. The text, context and legislative history of ORS 307.130(2)(a) demonstrate that vacant land held for future use is not land "actually and exclusively occupied or used."

Whether the real property held by Habitat for future use is exempt from taxation under ORS 307.130(2)(a) is a question of statutory construction, which this court resolves using the principles set out in *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009). This court looks first to the text of the statute, in context, then to its legislative history, and finally, if the statute is ambiguous, this court will resolve any remaining ambiguity by applying well-established canons of

statutory construction. *Id*. at 171-72. In the context of tax exemption statutes, this court has long applied a "strict but reasonable" canon of construction in favor of taxation. *German Apost. Christ. Church v. Dept. of Rev.*, 279 Or 637, 640, 569 P2d 596 (1977).

1. Text

"Taxation is the rule and exemption from taxation is the exception." *Oregon Methodist Homes, Inc. v. Horn*, 226 Or 298, 307, 360 P2d 293 (1961). In Oregon, charities "enjoy no inherent right to exemption from taxation and are immune only in so far as they may be *specifically* exempted by constitutional provision or statutory enactment." *Id.* citing *Security Savings & Trust Co. v. Lane County*, 152 Or 108, 141, 53 P2d 33 (1935) (emphasis added). Here, Habitat sought an exemption from taxation for real property under ORS 307.130(2)(a). That statute provides:

> (2) Upon compliance with ORS 307.162, the following property owned or being purchased by * * * charitable * * * institutions shall be exempt from taxation:
>
> (a) Except as provided in ORS 748.414, only such real or personal property, or proportion thereof, *as is actually and exclusively occupied or used* in the * * * charitable * * * work carried on by such institutions.

(Emphasis added.) The legislature has not defined the terms that make up the phrase "actually and exclusively occupied or used," and, without a statutory definition, this court will "ordinarily look to the plain meaning of a statute's

text as a key first step in determining what particular terms mean." *Comcast Corp. v. Dept. of Rev.*, 356 Or 282, 295, 337 P3d 768 (2014). In consulting dictionaries, this court "uses sources contemporaneous with the enactment of the statute." *Id.* at 296 n 7.

The phrase "as is actually and exclusively occupied or used" was made part of ORS 307.130 in 1955. Or Laws 1955 ch 576 §1(a). Prior to that enactment, the statute, which had existed under various designations since prior to statehood, had exempted from taxation "such real estate" belonging to charitable institutions, "as is actually occupied for the purposes for which they were incorporated." ORS 307.130 (1953). The "actually occupied" text had been enacted by the territorial legislature in 1854, and had continued in operation after statehood in 1859 by operation of Article XVIII, section 7, of the Oregon Constitution. General Laws of Oregon, ch 53, § 4 p. 894 (Deady 1845-1864); *see also YMCA of Columbia-Willamette v. Dept. of Rev.*, 308 Or 644, 651-52, 784 P2d 1086 (1989) (describing evolution of statute). Thus, when looking to the plain meaning of the terms "actually" and "occupied," this court should consult sources contemporaneous with the original, 1854, enactment and when construing the term "used" this court should look to sources contemporaneous with the 1955 amendment to ORS 307.130.

In 1854, one dictionary defined "actual" as "real or effective, or that exists truly and absolutely * * * Existing in act; real; in opposition to

speculative or existing in theory only." 1 Noah Webster, *An American Dictionary of the English Language* (unpaginated) (1828) (1970 reprint). As pertinent here, that same dictionary defined "occupy" as "**1**. To take possession. **2**. To keep in possession; to possess; to hold or keep for use. * * * **4**. To employ; to use."[3] When the 1955 legislature amended ORS 307.130, the word "used" was defined as "[e]mployed in accomplishing something; esp., customarily or repeatedly so employed." *Webster's Second New International Dictionary* 2806 (unabridged ed. 1959).[4]

To be sure, the broad and overlapping definitions of "occupied" and "used" possibly could encompass Habitat's acquisition and possession of real

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[3] Webster's 1828 dictionary did not define "occupied." That word was not defined by Webster's until Webster's Third, where it was defined as "**1 :** held by occupation * * *[.]" *Webster's Third New International Dictionary*, 1561 (unabridged ed. 2002). That same dictionary defined "occupation" as "**3 a :** the actual possession and use of real estate[.]" *Id.* at 1560. It also defined "occupy" is as "**4 a :** to hold possession of * * * **5 :** to reside in as an owner or tenant[.]" *Id.* at 1561.

[4] In 1955, the word "actually" was defined as "[i]n act or in fact; really; also, at the present moment; for the time being." *Webster's Second New International Dictionary* 28 (unabridged ed. 1959). The same dictionary defined "occupy" as

"1. to take or enter upon possession of; to seize * * * 2. To take up, or have place in, the extent, room space or time of; to file; as, the camp *occupies* five acres * * * 3. To hold possession of; to hold or keep for use[.]"

Id. at 1684.

property for future employment in Habitat's charitable work.[5] But by limiting the exemption provided by ORS 307.130 to "only such real or personal property * * * as is *actually* and exclusively occupied or used" by a charitable institution in carrying on its work, the legislature has foreclosed that possibility. The term "actually" limits the exemption to real property on which the charity's occupation or use is "*real* or *effective* * * * in opposition to *speculative* or *existing in theory* only."[6] Thus, ORS 307.130(2)(a) does not exempt property

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[5] By adding the term "used" to the statute in 1955—while retaining the terms "actually" and "occupied" --the legislature may have recognized that "used" and "occupied" have similar meanings, and included "used" to indicate that the term "occupied" was intended to be construed as pertaining to possession of, or physical presence on, land or premises. An 1899 decision of this court noted that "occupied" and "used" often had the same meaning. *See Willamette University v. Knight*, 35 Or 33, 40, 56 P 124 (1899) (observing that "occupied" and "used" "are often employed interchangeably, and are, in a sense, synonymous; and yet some authorities distinguish between them, giving the word 'used' a broader signification than "'occupied.'"); *see also* 2 Noah Webster, *An American Dictionary of the English Language* (unpaginated) (1828) (reprint 1970) (defining "occupy" as, among other things, "[t]o employ; to use"). The legislative history of the 1955 amendments to ORS 307.130 does not disclose any discussion of the intended meaning of the term "used."

[6] That conclusion also obtains if the legislature intended to adopt the then-current definition of "actually" when it amended ORS 307.130 in 1955. As noted, one contemporaneous dictionary defined "actually" as ""[i]n act or in *fact*; really; also, *at the present moment*; for the time being." *Webster's Second* at 28. Thus, in both 1854 and 1955 the term "actually" foreclosed the possibility that the terms "occupied" or "used" could apply to future use or occupation.

that is held for *future* use or occupation by a charitable institution.[7] And although one of the Nineteenth century definitions of "occupy" was "to hold or keep for use," this court has held that merely holding land for future use does not constitute actual and exclusive occupation or use, and the statutory context of ORS 307.130 demonstrates that where the legislature intends to exempt from taxation land that is held for future use, it does so by employing the term "held," not the term "occupied."

2. Case law

Statutory context also includes decisions of this court construing ORS 307.130(2)(a) or its predecessors. *State v. Cloutier*, 351 Or 68, 100, 261 P3d 1234 (2011). This court's decisions in *Willamette University v. State Tax Comm.*, 245 Or 342, 344, 422 P2d 260 (1966) and *Emanuel Lutheran* describe the boundaries of the exemption provided by ORS 307.130(2)(a) in the context of vacant land held for future development. Although this court initially suggested in *Willamette* that land being *prepared* for use by a charitable institution was exempt under the statute, this court limited that proposition in

[7] For the 2013-14 tax year at issue in this case, Habitat was required to actually and exclusively occupy or use the property no later than July 1, 2013. *See* ORS 311.410(1). There is no dispute that, as of July 1, 2013, Habitat was merely holding vacant land for future use to build affordable housing. (ER 21).

Emanuel Lutheran, holding that the actual occupancy requirement in ORS 307.130, at a minimum, required a building under construction.

In *Willamette* this court held that "a building in the course of construction is being occupied and used for the purposes of the exempt corporation," and, thus, qualified for exemption under ORS 307.130. 245 Or at 346-47. Habitat relies on this court's statement in *Willamette* that the phrase "'actually occupied and used' pertains to whether or not the premises are then being prepared to carry out the purposes of the exempt charity[.]" 245 Or at 349. (Pet BOM at 5). Habitat's reliance is misplaced: that statement must be read in light of the facts before the court in *Willamette*.

In *Willamette*, the university sought an exemption for five parcels of land. 245 Or at 343. "The admitted facts" disclosed that, at the time of the assessment "student housing units were under construction on parcels 1 through 4 and parcel 5 was being used for parking purposes without charge to those going to and from parcels 1 through 4." *Id.* at 344. Thus, when this court framed the question in *Willamette* as "whether or not the premises are then being prepared to carry out the purposes of the exempt charity," the preparations it referred to were *physical* preparations—buildings under construction and a parking lot serving the parcels where that construction was occurring. *See Soc. of St. Vincent DePaul v. Dept. of Rev.*, 272 Or 360, 365, 537 P2d 69 (1975) (explaining that, in *Willamette*, "this court construed

ORS 307.130 to allow an exemption for a building which was *under construction* but not yet completed." (emphasis added)). Thus, even when read in isolation *Willamette* does not stand for the proposition that mere ownership of vacant land with the intent to use it in the future for charitable purposes constitutes actual use or occupation.

Willamette also must be read in light of *Emanuel Lutheran*, decided six years later, where this court rejected the same argument Habitat now raises—that vacant land held for future use is land actually and exclusively occupied or used—and limited its holding in *Willamette* to its facts. There, the hospital had urged this court to "extend our holding in *Willamette Univ.* to include vacant land held for future use in tax exempt activities, but on which building of facilities has not yet begun." *Emanuel Lutheran*, 263 Or at 290. The hospital had acquired the property it sought to exempt from taxation with the intention of using it to expand its hospital facilities. *Id.* at 289. On the assessment date, the land was vacant and no construction had begun. *Id.*at 289.[8]

This court again considered the phrase "actually and exclusively occupied or used" in ORS 307.130 and held that

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[8] Although no construction had begun, the Tax Court's opinion in *Emanuel Lutheran* reflects that the hospital had begun physical preparation of the property for future construction by removing "old dwellings and other buildings" and filling basements as required by the City of Portland. *Emanuel Lutheran Charity Bd. v. Dept. of Rev.*, 4 OTR 410, 413 (1971). But, as here, "the property was lying idle and unimproved on the assessment date." *Id.*

> By requiring that exempt property be actually occupied for charitable or other exempt purposes the legislature must have meant something more than mere ownership or even ownership with an intent to put land to an exempt use in the future. *Actual occupancy must mean as a minimum that the land be occupied by a building under construction.*
>
> We agree with the Tax Court that *land merely being held for future use is not being actually occupied or used* for the benevolent or charitable work carried on by plaintiff.

Id. at 291-92 (emphases added). This court characterized its holding in *Willamette* as going "to the limit of a strict but reasonable construction" of ORS 307.130, and cautioned that "further extension must be made by legislative action and not by judicial construction." *Id.* at 292.[9]

Habitat does not ask this court to overrule *Emanuel Lutheran*. Applying that holding to the circumstances of this case demonstrates that the vacant land Habitat holds for future use as affordable housing is not "actually and exclusively occupied or used" as required by ORS 307.130 because Habitat has not begun construction of a building on that property.

Habitat argues that *Emanuel Lutheran* is distinguishable because—according to Habitat—the hospital's charitable purpose did not include

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[9] It bears noting that the legislature recently has acted to exempt certain vacant land held for future use. *See* ORS 307.513 (2015) (providing exemption from taxation for land held by nonprofit corporations for future construction of residences to be sold to low-income individuals). The legislature has limited to ten years the time that land may be exempt from taxation under that statute. ORS 307.513(2)(a)(B).

acquiring property for future use whereas, here, Habitat's "*present* tax exempt activities include purchasing property." (Pet BOM at 5-6) (Emphasis in original). Habitat asserts that the holding in *Emanuel Lutheran* was grounded in a finding by this court "that the property was not within the 'benevolent and charitable work' carried on by the hospital." (Pet BOM 6).

Habitat is mistaken. The hospital's "charitable purpose" was not at issue in *Emanuel Lutheran*. Instead, this court's decision turned on the fact that the hospital had not *actually* occupied or used the property. This court made no finding that the hospital's land acquisitions were outside the scope of the hospital's charitable purpose, nor did it frame the issue as whether or not those acquisitions were within the hospital's charitable purpose. On that point, there was no dispute. As this court noted, the hospital on the "assessment date was 'preparing' to carry out charitable uses of the land in the sense that it was taking steps under its master plan to procure detailed plans and financing." 263 Or at 291. This court's decision turned entirely on "whether the property on the assessment date was 'actually and exclusively occupied or used' by Emanuel in the benevolent and charitable work carried on by it." *Id.* at 289. And, as set out above, this court concluded that because the hospital had not begun construction on the vacant land for which it had sought exemption, it had not "actually and exclusively occupied or used" that land under ORS 307.130. *Id.* at 291-92. The same result should obtain here.

Just as the hospital in *Emanuel Lutheran*, Habitat may well have been "preparing" to carry out charitable uses of the vacant land when it acquired it for future use as affordable housing. But under *Emanuel Lutheran* preparation is not enough. Because Habitat had not begun construction of a building on the land by July 1, 2013, that land was not exempt under ORS 307.130(2)(a).

3. Statutory context

The statutory context of ORS 307.130(2)(a) further demonstrates that Habitat had not "actually and exclusively occupied or used" its property prior to July 1, 2013. "Statutory context includes other provisions of the same statute and other related statutes, as well as the preexisting common law and the statutory framework within which the statute was enacted." *Fresk v. Kraemer*, 337 Or 513, 520-21, 99 P3d 282 (2004).

As noted, the phrase "actually and exclusively occupied or used" was added to ORS 307.130 in 1955. Or Laws 1955, ch 576, §1(a). ORS 307.090 (1955) demonstrates that the 1955 legislature knew how to exempt from taxation property intended for future use, and it did so by including qualifying language that is absent from ORS 307.130. *See PGE v. Bureau of Labor & Indus.*, 317 Or 606, 614, 859 P2d 1143 (1993) ("The legislature knows how to include qualifying language in a statute when it wants to do so.").
ORS 307.090 (1955) provided that "[e]xcept as provided by law, all property of the state and all public or corporate property *used or intended* for corporate

purposes [of the state, counties or municipal corporations] is exempt from taxation." ORS 307.090 (1955).

Several provisions of ORS Chapter 307 enacted after the 1955 amendments to ORS 307.130 further demonstrate that the legislature did not intend the phrase "actually and exclusively occupied or used" to include real property held for future use. This court will look to later-enacted statutes as "strong evidence" that, "when the legislature intends to condition [the operation of a statute on a certain event or requirement], it knows how to express that intention." *Con-Way Inc. & Affiliates v. Dept. of Revenue*, 353 Or 616, 626, 302 P3d 804 (2013)(quoting *Gladhart v. Oregon Vineyard Supply Co.*, 332 Or 226, 233, 26 P3d 817 (2001)). Here, the later enacted statutes contained in ORS Chapter 307 demonstrate that when the legislature intends to condition a tax exemption upon a taxpayer's holding of property for future use, it consistently has employed terms other than "actually and exclusively occupied or used."

For instance, ORS 307.115(1)(a), enacted in 1971, exempts from taxation "[t]he real or personal property, or proportion thereof, as *is actually and exclusively occupied or used* for public park or public recreation purposes," while ORS 307.115(1)(b) exempts "the real or personal property, or proportion thereof, as is *held* for public parks or public recreation purposes." (Emphases added.) If property held for future use were encompassed in the phrase

"actually and exclusively occupied or used," the legislature would not have needed to enact ORS 307.115(1)(b) to exempt property "held for public parks or public recreation purposes[.]"

Three statutes relating to cemeteries further demonstrate that the legislature consistently has employed the term "held" in contradistinction to the term "used." ORS 307.140(3) exempts from taxation "land and the buildings thereon held or used solely for cemetery or crematory purposes," where that land is held by a religious organization. Likewise, ORS 307.150(1)(b) exempts from taxation "[l]ands used or held exclusively for cemetery purposes." And ORS 307.155(1) provides that "[l]and that is exempt from ad valorem property tax * * * that ceases to be used or held exclusively for cemetery or crematory purposes shall be subject to assessment and taxation[.]"

Those three statutes support the conclusion that the phrase "actually and exclusively occupied or used" does not include property that is "held" for future use. Those statutes also demonstrate that the legislature knows how to enact statutes specifically to exempt land that, by virtue of its intended use, necessarily will be held for some period of time prior to being used. Where the legislature has intended to exempt property that is "held" it has employed that term, and it has contrasted "held" with the term "used" by consistently interposing between those terms the term "or," indicating that "held" and "used" are alternatives to one another. *See* ORS 307.140(3) ("held or used");

ORS 307.150(1)(b) ("used or held"); ORS 307.155 ("used or held"); *see also, e.g., State ex rel Burke v. DLCD*, 352 Or 428, 435-437, 290 P3d 790 (2012) (explaining function of the term "or" with respect to alternatives). The term "used" appears in ORS 307.130. The term "held" does not. This court should not read the phrase "actually and exclusively occupied or used" as encompassing land that is "held" for future use.

4. Legislative history

The legislative history of the 1955 amendments to ORS 307.130 is sparse, but generally cuts against Habitat's argument on review that its charitable purpose is dispositive of whether it has actually occupied or used the property. (Pet BOM 5-6).[10] The 1955 amendments were introduced as HB 57, and although the minutes reflect no specific discussion of the "actually and exclusively occupied or used," a witness, Kermit Carson, Deputy Multnomah County Assessor

> [E]xplained their problems where they tax real property but must exempt personal property. He spoke of the organizations which have large powers through their articles of incorporation and felt the test for taxing should be in what they do, not what is included in the articles.

Minutes, Senate Committee on Assessment and Taxation, April 12, 1955.

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[10] The bill tracing prepared by the State Archives reflects that there is "no exhibit file," and "no sound recordings," or "audio recordings" for HB 57 (1955).

That statement reflects a concern that the test for an exemption should hinge on *actual* use or occupation, not on statements of charitable purpose. *Cf. Oregon Methodist Homes, Inc. v. Horn*, 226 Or at 308 (explaining that whether hospital was a charity entitled to exemption under ORS 307.130 "is to be determined * * * not only from its powers as defined in its charter, but also from the manner in which it is conducted[.] * * * Unselfish declarations of intended purpose and promises of future worthy endeavor are many times rendered meaningless by inaction and should give the declarer no preferred status unless ultimately resolved into concrete and tangible reality."). In any event, nothing in the legislative history indicates that the legislature intended the exemption in ORS 307.130 to apply to vacant land held by a charitable institution for future use.

5. Canons of construction

If, after examining the text, context and legislative history of ORS 307.130(2)(a) this court concludes that the statute's meaning is ambiguous, then it should resolve any ambiguity in favor of taxation by applying the "strict but reasonable" construction canon. This court has explained that "tax exemption statutes are to be construed strictly but reasonably[.] * * * Strict but reasonable means merely that the statute will be construed reasonably to ascertain the legislative intent, but in case of doubt will be construed against the taxpayer." *German Apost.*, 279 Or at 640 citing

Emanuel Lutheran, 263 Or at 291 (ellipses in original). This canon is well established in Oregon law, reflecting the general principle that taxation is the rule and exemption from taxation is the exception and, thus, that "an exemption is denied unless it is so clearly granted as to be free from reasonable doubt." *Oregon Methodist Homes*, 226 Or at 307 citing *Behnke-Walker v. Multnomah County*, 173 Or 510, 521, 146 P2d 614 (1944). Accordingly, if this court concludes that ORS 307.130(2)(a) is ambiguous, it should construe that statute against Habitat and hold that the land is not exempt from taxation.

C. The Tax Court correctly concluded that Habitat's land is not exempt under ORS 307.130(2)(a).

To recapitulate: the text of ORS 307.130(2)(a), in particular the term "actually," does not support Habitat's argument that the statute's exemption applies to vacant land held for future use. That conclusion is reinforced by the context of ORS 307.130, particularly this court's decisions in *Willamette* and *Emanuel Lutheran*, which Habitat does not challenge and cannot distinguish. Other related statutes further reinforce that conclusion, demonstrating that where the legislature intends to exempt land held for future use, it knows how to do so by including qualifying language that is absent from ORS 307.130(2)(a). In short, Habitat has not brought itself within the scope of ORS 307.130(2)(a) by beginning construction on the vacant land it sought to

exempt. Accordingly, that property was subject to taxation, and the Tax Court correctly granted the Department's cross-motion for summary judgment.

CONCLUSION

This court should affirm the Tax Court's judgment.

Respectfully submitted,

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NOTICE OF FILING AND PROOF OF SERVICE

I certify that on February 26, 2016, I directed the original Respondent's Answering Brief to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Gina Anne Johnnie, attorney for appellant, by using the court's electronic filing system.

I further certify that on February 26, 2016, I directed the original Respondent's Answering Brief to be served upon Scott A. Norris, attorney for respondent Marion County Assessor, by mailing two copies, with postage prepaid, in an envelope addressed to:

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CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 4,518 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(2)(b).

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