

**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**  
**5234**

**S063542**

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**Appeal from the Judgment of the Oregon Tax court**  
**Honorable Henry C. Breithaupt, Judge**

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**OPENING BRIEF AND EXCERPT OF RECORD OF APPELLANT HABITAT FOR**  
**HUMANITY OF THE MID-WILLAMETTE VALLEY**

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## **STATEMENT OF THE CASE**

### **A. Nature of the Action and Judgment**

This case involves whether Habitat for Humanity of the Mid-Willamette Valley (“Habitat”) is entitled to an exemption under ORS 307.130(2)(a) for tax year 2013. The case concerns whether Habitat’s ownership of bare land is consistent with its charitable purpose, thereby entitling it to an exemption under the statute.

When the case was before the Oregon Tax Court, Habitat filed a motion for summary judgment. The Department of Revenue, State of Oregon (“Department”) filed a cross motion for summary judgment. The Marion County Assessor, who intervened in that Oregon Tax Court case, joined in the Department’s motion. The Oregon Tax Court denied Habitat’s motion and granted the Department’s motion. Habitat seeks a review of that decision.

### **B. Jurisdiction and Timeliness.**

Judgment was entered on August 17, 2015. The notice of appeal was served and filed on September 14, 2015. The appeal is timely pursuant to ORS 19.255(1), and the Court has jurisdiction pursuant to ORS 305.445.

### **C. Question Presented on Appeal.**

Is bare land owned by Habitat for which a building permit has not yet been issued, actually and exclusively occupied or used in a manner consistent

with its charitable purpose such that Habitat is entitled to exempt status for that property under ORS 307.130(2)(a)?

**D. Summary of Argument.**

Habitat's undisputed charitable purpose is to acquire real property, develop it, build houses on it, and then sell it to low income families at below market prices. Once the real property is sold by Habitat to a qualified family, the property is subject to real property taxation in its improved state. The real property at issue in this case was purchased and, during all relevant times, was being used in a manner consistent with Habitat's charitable purpose. While cases relied upon by the Department require a building permit prior to allowing the exemption, the organizations in those cases have charitable purposes that do not include acquiring and developing real property. Acquiring and developing real property is one part of Habitat's current charitable purpose; it is not an action in furtherance of a future purpose. Real property is Habitat's inventory and a unique part of its charitable purpose. As a result, upon purchasing and holding real property, Habitat is actually and exclusively occupying or using the property in a manner consistent with its charitable purpose within the meaning of ORS 307.130(2)(a), and thus, is entitled to a tax-exempt status.

**E. Statement of Facts.**

As mentioned above, Habitat's undisputed charitable purpose is to acquire real property, develop it, build houses on it, and then sell it to low income families at below market prices. (ER 1 at ¶¶ 6 and 9; ER 4 at ¶ 3; ER 6 at ¶ 3; ER 8 at ¶ 3; ER 10 at ¶ 3; ER 12 at ¶ 3; ER 14 at ¶ 3; ER 16 at ¶ 3; and ER18 at ¶ 3). Habitat does not operate homes for the needy; instead it purchases property, develops it, builds homes on it and then sells it to the needy. A home that Habitat builds is unique in that when it is sold to a qualified family, it loses its tax-exempt status. (See ER 1 at ¶ 7).

On or about September 14, 2012, Habitat purchased real property located at Alexis Lane, Keizer, Oregon (the "Property"). (ER 20 at ¶ 2). On August 10, 2013, Habitat filed an Application for Real and Personal Property Tax Exemption for the Property, asserting that the Property is entitled to a charitable exemption under ORS 307.130(2)(a). (ER 1 at ¶ 4). In a letter dated August 26, 2013, the Marion County Assessor denied the application on the basis that the Property was vacant on July 1, 2013, and not being "'actually and exclusively occupied or used' for the charitable purpose of providing homes to the needy." (Exhibit 4 to ER 20). On or about September 26, 2013, Habitat sought a building permit for the Property; and on or about October 17, 2013, Habitat obtained the building permit. (ER 20 at ¶¶ 4 and 5). The

Property was acquired for the sole purpose of constructing housing for resale to qualified individuals in need at or below the cost of acquisition and construction. (ER 20 at ¶ 8.e.). Habitat had no other intention with respect to the Property. (ER 20 at ¶ 8.e.). Each step of the process, including buying the Property, developing it, obtaining a building permit, and building a house on it, are actions consistent with Habitat's current charitable purpose and are not preparatory actions to fulfill some future purpose. (See ER 1 at ¶¶ 6 and 9; ER 4 at ¶ 3; ER 6 at ¶ 3; ER 8 at ¶ 3; ER 10 at ¶ 3; ER 12 at ¶ 3; ER 14 at ¶ 3; ER 16 at ¶ 3; and ER 18 at ¶ 3). Indeed, there are no facts in evidence contrary to Habitat's current charitable purpose.

### **ASSIGNMENT OF ERROR**

**The Oregon Tax Court Erred in Denying Habitat's Motion for Summary Judgment and granting the Department's Cross Motion for Summary Judgment.**

#### **A. Preservation of Error.**

Habitat filed a Motion for Summary Judgment with the Oregon Tax Court on the same issue Habitat now presents before this Court. It is Habitat's position that the Oregon Tax Court erred in denying that Motion and granting the Department's Cross Motion for Summary Judgment on the issue.

## **B. Standard of Review.**

The issue presented on appeal arises from the Oregon Tax Court's application of ORS 307.130(2)(a) to the facts specific to Habitat and this case. This Court reviews decisions of the Oregon Tax Court for "errors or questions of law or lack of substantial evidence in the record to support the tax court's decision." ORS 305.445.

## **ARGUMENT**

At the time Habitat sought an exemption under ORS 307.130(2)(a), Habitat actually and exclusively occupied and used the Property in a manner consistent with its charitable purpose and, as a result, was entitled to an exemption for the Property. Pursuant to *Willamette University v. State Tax Commission*, 245 Or. 342, 422 P.2d 260 (1966), actual physical occupancy is not necessary. If the property is being used for the purposes of the exempt charity or if the property is being prepared to be used to carry out the purposes of the exempt charity, then the property is exempt. Both the Department and the Oregon Tax Court relied on *Emanuel Lutheran Charity Board v. Department of Revenue*, 263 OR 287, 502 P2d 251 (1972) ("*Emanuel II*") in support of the conclusion that Habitat was not entitled to an exemption. The facts in that case and the facts before this Court, however, are distinguishable. In *Emanuel II*, a hospital purchased property for *future* tax exempt activities; to



be clear, the hospital's tax exempt activity was to operate a hospital and the property the hospital purchased was for future expansion as a hospital. By contrast, Habitat's *present* tax exempt activities include purchasing property. (See ER 1 at ¶¶ 6 and 9; ER 4 at ¶ 3; ER 6 at ¶ 3; ER 8 at ¶ 3; ER 10 at ¶ 3; ER 12 at ¶ 3; ER 14 at ¶ 3; ER 16 at ¶ 3; and ER 18 at ¶ 3). Habitat is different in that it is not buying property for future tax exempt use, but buying property to be used consistent with its current tax exempt use.

It is also significant to note that although the court in *Emanuel II* held that “the property on the assessment date” was not “‘actually and exclusively occupied or used’ by Emanuel”, it did so because it found that the property was not within the “benevolent and charitable work” carried on by the hospital. 263 OR at 288. In contrast to *Emanuel II*, the Court here should conclude that the Property on the assessment date was “actually and exclusively occupied or used” by Habitat because the benevolent and charitable work carried on by Habitat currently includes holding real property. (See ER1 at ¶¶ 6 and 9; ER 4 at ¶ 3; ER 6 at ¶ 3; ER 8 at ¶ 3; ER 10 at ¶ 3; ER 12 at ¶ 3; ER 14 at ¶ 3; ER 16 at ¶ 3; and ER 18 at ¶ 3). Again, the Property is not held for future charitable activities, but for current charitable activities consistent with Habitat's actual charitable purpose. To find otherwise would be akin to changing or ignoring Habitat's undisputed charitable purpose.

Also of significance is that the Oregon Tax Court relied on ORS 307.140(3) and 307.150(1)(b) when concluding that Habitat was not entitled to an exemption. Specifically, the Oregon Tax Court held that Habitat was not entitled to an exemption because the legislature did not expressly include or otherwise refer to the word “held” in ORS 307.130 as it did in ORS 307.140(3) and 307.150(1)(b), which address religious organizations and burial and crematory properties, respectively. By coming to this conclusion, however, the Oregon Tax Court essentially altered Habitat’s undisputed charitable purpose. Habitat’s charitable purpose is to purchase real property, develop it, build houses on it, and then sell it to low income families at below market prices. Habitat’s undisputed charitable purpose thus specifically includes purchasing real property. Presumably, the language in both ORS 307.140(3) and 307.150(1)(b) includes the word “held” because holding property is not a normal activity or the actual purpose of religious organizations or burial and crematory institutions. As stated above, Habitat’s actual charitable purpose includes purchasing and holding real property. So long as Habitat is purchasing real property for the purpose of developing it, building houses on it, and selling it to low-income families, the property is being occupied and used in a manner consistent with Habitat’s charitable purpose. As a result, Habitat should be entitled to an exemption under ORS 307.130(2)(a).

## CONCLUSION

Based on the above, Habitat respectfully requests that the Court reverse the decision of the Oregon Tax Court and remand this case for entry of judgment in its favor.

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