

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

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

**APPELLANT HABITAT FOR HUMANITY OF THE MID-WILLAMETTE
VALLEY'S REPLY BRIEF**

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SUMMARY OF ARGUMENT

The parties agree that in order to obtain an exemption from paying real property taxes under ORS 307.130(2)(a), Habitat for Humanity of the Mid-Willamette Valley (“Habitat”) must actually and exclusively be using property in a manner consistent with its charitable mission. Statutory construction is not in dispute; nor is Habitat’s charitable and benevolent mission or purpose. Despite those agreements on the law and facts, the Respondent makes the leap that Habitat was holding Alexis Lane, Keizer, Oregon (the “Property”) for future use, not present use, consistent with its charitable mission. The undisputed facts before this Court are that on the assessment date, Habitat was using the Property in a manner consistent with its *present* charitable purpose and, accordingly, Habitat is entitled to the exemption afforded to it under ORS 307.130(2)(a).

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, is entitled to an exemption. Nothing in the applicable statutes or case law specifically prohibits bare land from being exempt because the test is not that simple. To be clear, Habitat is not seeking a decision overruling *Emanuel Lutheran Charity Bd. V.*

Dept. of Revenue, 263 Or. 287, 502 P.2d 251, 252 (1972), nor is it asking that ORS 307.130(2)(a) be construed in some unusual way. The parties agree on the law. They disagree, however, upon application of that law to the undisputed facts.

ORS 307.130(2)(a) provides that to be exempt, the property must be actually and exclusively occupied or used in the charitable work of the applicant. Pursuant to *Willamette University v. State Tax Commission*, 245 Or. 342, 422 P.2d 260 (1966), “actual physical occupancy” is not necessary. Rather, 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 on the assessment date, then the property is exempt. *See id.* By relying on *Willamette University*, Habitat is *not* arguing that mere ownership of vacant land with the intent to use it in the future for some charitable purpose constitutes use or occupation. Instead, Habitat’s position is that on the assessment date, it was using the Property for its *current* charitable purposes, and therefore, the Property should be exempt under ORS 307.130(2)(a).

In contrast to this case, in *Emanuel*, 263 Or. at 292, this Court held that the property there was not exempt under ORS 307.130. In that case, it was undisputed that Emanuel was a general hospital, which also provided teaching and research services. *Id.* at 289. This Court determined that because Emanuel

was holding the property for *future* use and was not actually occupying or using it for the benevolent or charitable work carried on by it as of the assessment date, the property was not exempt under ORS 307.130. *Id.* at 292.

Unlike *Emanuel*, here the outcome should be different because on the assessment date, Habitat was *presently* using the Property in a manner consistent with its benevolent and charitable work. Despite the fact that the Respondent relies on only one of Habitat's charitable activities, namely building affordable houses, (Resp. Brief, Page 2), it is undisputed that Habitat's charitable and benevolent work not only includes building affordable houses, but also acquiring real property, developing it and then selling a complete house to low income families at below market prices. (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 ER18 at ¶ 3). Here, the Property purchased by Habitat is actually occupied and being used in its *present* charitable and benevolent work and not for *future* charitable and benevolent work. Indeed, there are no cases or statutes that exclude Habitat's charitable and benevolent work, namely its acquiring of real property, developing it, building houses on it and then selling it to low income families at below market prices, from qualifying as charitable and benevolent work within the meaning of ORS 307.130. The Respondent

should not be allowed to limit or determine the scope of Habitat's charitable and benevolent work to achieve a different result.

Again, Habitat presents undisputed facts that are different from those presented in *Emanuel*. Specifically, in contrast to *Emanuel*, here Habitat purchased the Property not for some *future* tax-exempt use, but for its *current* tax-exempt use, and was actually occupying and using the Property in its *present* charitable and benevolent work as of the assessment date. As such, Habitat should be entitled to the exemption under ORS 307.130.

CONCLUSION

Based on the above, as well as the arguments presented in its Opening Brief, Habitat respectfully requests that the Court reverse the decision of the Oregon Tax Court and remand this case for entry of judgment in Habitat's favor.

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Certificate of Filing & Service

I certify that on the 16th day of March, 2016, I filed the foregoing reply brief by causing the original to be filed electronically with the Supreme Court Administrator for the State of Oregon, and that I served two true copies of the opening brief by United States First Class mail on the following:

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

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I certify that:

(1) this brief complies with the word-count limitation in ORAP 5.05(2)(b), and

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I certify that the size of the type in this brief, for both text and footnotes is not smaller than 14 point, as required by ORAP 5.05(4)(g).

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