

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

LEBANON COMMUNITY FOUNDATION, INC.,)	
)	
)	
Plaintiff,)	No. 011005A
)	
v.)	
)	
LINN COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Lebanon Community Foundation, Inc. (LCF) has appealed the denial of its application for a property tax exemption, under ORS 307.130,¹ for the 2001-02 tax year. The property at issue is identified by Account Nos. 426292 and 874454. LCF was represented by Joseph K. Phillips. Linn County appeared through its assistant county counsel, Brad Anderson.

The issue in this appeal is whether a private organization in the process of building a facility for public use may exempt its property under ORS 307.130.

STATEMENT OF FACTS

LCF is an incorporated institution, specifically a nonprofit corporation, whose roots are in The Strawberry Foundation and the community's annual Strawberry Festival. An IRC Section 501(c)(3) organization, it separately accounts for funds and donations, and does not operate for the private advantage of its founders and officials. Upon dissolution its assets are used for a charitable purpose.

The purpose of LCF is to promote the social, cultural, and economic development of Lebanon and eastern Linn County through the creation of civic projects, including maintaining public lands and buildings, the preservation of cultural history, and

¹ All references to the Oregon Revised Statutes are to 2001.
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the coordination of projects of interest among similar entities in the region and community. Most particularly, it has worked to develop the Lebanon Community Park at Cheadle Lake.

That is the property at issue in this appeal. When completed, the 35 acre facility near Cheadle Lake on Highway 20 at Weirich Rd. will be a regional park with an amphitheater, festival grounds, baseball and soccer fields, a pavilion, playarea, and parking. The project is projected to cost on the order of \$4 million. When the park is completed LCF intends to turn the property over to the city. Towards that end the project is listed on the city of Lebanon Comprehensive Parks Master Plan as a new park acquisition under development. Ron Passmore, a Director of LCF and a former mayor and councilor of the city of Lebanon who now serves on its City Parks Committee, explained that a nonprofit corporation was used to develop the park because public money was simply not available.

Significant steps have been taken towards developing the park. More than \$1,167,000 in cash and donated land and labor have been contributed. LCF has constructed over \$700,000 in public infrastructure improvements that are required to support the developed park. These include a deceleration lane on Highway 20, a rail crossing, street improvements, and extension of a sewer line. A public well has been constructed on the site.

There are some users of the property in its current state. The most dramatic use of the site is for the Strawberry Festival, Lebanon's largest annual event. As the property is available for other nonprofit organizations in the community, the Elks Lodge used it for its annual picnic in 2000, a five day event involving some 500 participants. The Optimists staged a circus on the site in 2000. Any charges for the use of the site go to the development of the park.

Other points of note include the fact that the gates to the property are kept locked. Mr. Passmore explained this was to prevent a reoccurrence of the damage that the unauthorized use of four wheel drive vehicles had done to the property. Another element was the Oregon Department of Transportation's requirement that the gate providing access to the property from Highway 20 across the railroad tracks be kept locked until a crossing was installed.

For its part Linn County observed that the city of Lebanon is now purchasing other property for parks, however this observation must be tempered by the fact that none of these developments is of the scale of the subject property, with the exception of a contemplated "ecological park" to be developed in conjunction with a wastewater facility.

COURT'S ANALYSIS

This is apparently the first time this court has been asked to construe whether an otherwise qualifying entity developing a public park is able to exempt its property as a charitable institution under ORS 307.130. Two issues must be decided to resolve this appeal. The first is whether providing a public park can qualify as a charity, and if so, whether the property at issue was in fact used as a public park to a sufficient degree to qualify for exemption.

Is providing a park to the public charitable, within the meaning of ORS 307.130?

While charity has been an extremely active concept in this court, the court is nonetheless satisfied that even under its narrowest definition, providing public parks would qualify as charitable. At one point this court believed that charity was limited to relieving pain, alleviating disease, or removing constraints. *Oregon Country Fair v. Dept. of Rev.*, 10 OTR 200 (1986). Few things remove constraints more conspicuously than the ability to play, and that is exactly the opportunity a public park provides.

Current definitions of charity for purposes of ORS 307.130 are more generous, and find that it is enough that the activity conducted by the charitable institution must be for the direct good or benefit of the public or community at large. OAR 150-307.130-(A)(3)(b). There is no doubt that a public park directly benefits its community. The conclusion of the court is that providing a public park may qualify as a charitable activity for purposes of ORS 307.130.

Was the property at issue in fact used as a public park to a sufficient degree to qualify for exemption?

This is the more difficult of the two questions. Linn County reasons that it is incongruous for LCF to seek exemption because it intends to provide a public park when admission is denied to the facility. The gates to the property are kept locked. No one is allowed onto the 35 acres unless they pay a fee, as is the case of the patrons of the Strawberry Festival or the visitors to the Optimists' circus, or unless they first ask, and next receive, permission to use the premises, as was done by the Elks.

Such a restriction of access would, under other circumstances, be fatal to the exemption. However, the restricted access must be considered in a greater context. That context is more than the fact that restricted access is required by the Oregon Department of Transportation until such time as the railroad crossing is upgraded, or that restricted access is necessary until measures can be taken to restrict the irresponsible use of four wheel drive vehicles on the site. Instead, the public's inability to use the premises must be evaluated as part of the context of whether ORS 307.130's requirement that the property be "actually and exclusively used" by its owner for an exempt purpose has been met in this case.

When the facts are examined from this perspective, the point that the court finds significant is that, while the property may not yet be a public park, diligent work was at

all times being done to make it one. Significant advances have been made to the deceleration lane on Highway 20, a rail crossing, street improvements, and extension of a sewer line. A public well has been constructed on the site. These activities reflect that, while the public may not have had free access to the prospective park, steps were being taken so they could safely be accommodated. Properties being prepared for an exempt purpose may qualify for exemption. *Willamette Univ. v. Tax Com.*, 245 Or 342, 422 P2d 260 (1966).

Other authorities point to the same conclusion, albeit by contrasting this case to instances where an exemption was denied. In *Eman. Luth. Char. Bd. v. Dept. of Rev.*, 263 Or 287, 502 P2d 251 (1972), and later in *Perkins v. Dept. of Rev.*, 15 OTR 381 (2001) it was found that vacant property being held for future use did not qualify for exemption. However, the facts of this case are significantly different from either precedent. In *Eman. Luth. Char. Bd.* the plaintiff's plan for future use seemed indeterminate. In *Perkins* the plaintiff seems to have anticipated no use of the property.

Instead, in this case we have LCF moving as diligently as it can to create a regional park. It is not surprising that the progress is slower than all would wish. This is a community using a nonprofit entity to provide for themselves what their government cannot provide for them. At the same time this is a very real organization which has raised more than \$1 million in contributions and has made genuine progress in terms of creating the infrastructure necessary to create a park that can safely accommodate the play of musicians and children and performances both athletic and otherwise. This court cannot say, that because LCF has not yet completed the park, it cannot be exempted. Instead its decision is that the activities that have been done show a sufficient degree of use to qualify the property for exemption.

A remaining point presented by Linn County is that, when the facility is

completed, there is no guaranty that the city of Lebanon will accept the park and operate it. That is not an obstacle. LCF, when the park is complete, can apply for an exemption appropriate for completed parks, ORS 307.115. Linn County has not presented any other reason why the exemption should not be granted. LCF has shown, first, that providing a public park may qualify as a charity, and next, that its activities in preparing the property are a use consistent with the statute. LCF has made its case.

CONCLUSION

IT IS THE DECISION OF THIS COURT that the appeal is granted.

Dated this _____ day of July, 2002.

SCOT A. SIDERAS
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON JULY 18, 2002. THE COURT FILED THIS DOCUMENT ON JULY 18, 2002.