

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

HABITAT FOR HUMANITY MT. ANGEL	)	
AREA, INC.,	)	
	)	
Plaintiff,	)	No. 020065E
	)	
v.	)	
	)	
MARION COUNTY ASSESSOR,	)	<b>DECISION GRANTING</b>
	)	<b>PLAINTIFF'S MOTION FOR</b>
Defendant.	)	<b>SUMMARY JUDGMENT</b>

This matter is before the court on Plaintiff's Motion for Summary Judgment. Plaintiff appeals Defendant's denial of its 2001-02 application for property tax exemption for the property identified as Account Nos. R328007, R102214, and R102618. The court held a telephone oral argument on Plaintiff's motion July 24, 2002. Janice Hazel, Attorney, appeared on behalf of Plaintiff. Jane Ellen Stonecipher, Assistant Legal Counsel, Marion County Legal Counsel, appeared on behalf of Defendant.

**STATEMENT OF FACTS**

The subject properties are three parcels of land zoned for residential use and owned by Plaintiff. (Stip Fact ¶ 1.) For the 2001-02 tax year, Plaintiff filed an application for exemption for the three parcels claiming the properties were entitled to a charitable exemption under ORS 307.130.<sup>1</sup> Defendant denied Plaintiff's application because the properties were undeveloped and because Plaintiff had not yet applied for building permits for the properties. (Stip Fact ¶ 2.)

The parties agree that Plaintiff's organizational purpose is "the acquisition, development and subsequent sale of residential real property to low income families at

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 1999.  
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below market prices.” (Stip Fact ¶ 5.) The parties further agree that Plaintiff meets the organizational requirements for a charitable organization and that its purpose and activities are charitable in nature. (Stip Fact ¶ 4.) The dispute centers around whether the parcels are “used” for charitable purposes.

### **COURT'S ANALYSIS**

ORS 307.130 provides a property tax exemption for properties owned and used by charitable organizations. The statute states, in relevant part:

“(1) Upon compliance with ORS 307.162, the following property owned or being purchased by art museums, volunteer fire departments, or incorporated literary, benevolent, charitable and scientific 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 literary, benevolent, charitable or scientific work carried on by such institutions.*”

ORS 307.130 (emphasis added).

Defendant argues that because the property is not actively being used, it is not entitled to an exemption. Plaintiff maintains that acquiring bare land is an inherent and essential component of its charitable purpose and that the property is, therefore, being used for charitable purposes.

The burden of proving entitlement to an exemption is on the person claiming the exemption. In analyzing exemption cases, the court is guided by the principle that taxation is the rule and exemption from taxation is the exception. *Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev.*, 301 Or 423, 426-27, 723 P2d 320 (1986). Courts are to provide exemption statutes with a strict, yet reasonable construction to achieve the legislature’s intent. *SW Oregon Pub. Def. Services v. Dept. of Rev.*, 312 Or 82, 88-89, 817 P2d 1292 (1991). Recently, the Regular Division of the Tax Court noted that “[s]trict but reasonable construction does not require the court to give the narrowest

possible meaning to an exemption statute. Rather, it requires an exemption statute be construed reasonably, giving due consideration to the ordinary meaning of the words of the statute and the legislative intent.” *North Harbour Corp. v. Dept. of Rev.*, \_\_ OTR \_\_, (Aug 20, 2002) (slip op at 5).

Defendant acknowledges this is a close case but, given the precedent in *Eman. Luth. Char. Bd. v. Dept. of Rev.*, 263 Or 287, 502 P2d 251 (1972), Defendant determined it had no choice but to deny the exemption. *Emanuel Lutheran* addressed the issue of whether bare land held for future expansion of a hospital qualified for a charitable exemption. Finding there had to be at least some use of the property being made, the Oregon Supreme Court denied the exemption. In so ruling, the court noted:

“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 the 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.”

*Id.*, 263 Or at 291-92.

On its face, the quoted language appears to support the conclusion that the subject property is not entitled to exemption. However, it is important to remember the plaintiff’s charitable purpose in that case. The plaintiff was “a general hospital which also provide[d] teaching and research[ing] services.” *Id.* at 288. Acquiring property had no place in the plaintiff’s overall charitable purpose. Instead, the acquisition of the property was simply part of an overall plan for future expansion of the hospital.

In contrast, acquisition of the subject parcels is a necessary part of Plaintiff’s charitable objective, *i.e.*, providing low-income housing to families. After acquiring the property, Plaintiff constructs a home on the land then conveys the property to a worthy low-income recipient. Certainly, Plaintiff cannot carry out its purpose without first acquiring the property. As a consequence, given the differences between the two

organizations and their purposes, the court does not believe *Emanuel* bars an exemption in this case.

As noted, the parties agree that Plaintiff's organizational purpose is the "acquisition, development and subsequent sale of residential real property to low income families at below market prices." (Stip Fact ¶ 5) (emphasis added). This is a unique case because, typically, acquiring property is not an inherent part of a charitable organization's purpose. Here, however, Plaintiff's sole purpose is to provide housing to low income families. Acquiring the property is a necessary first step in the process.

ORS 307.130(1)(a) requires that a property be "actually and exclusively occupied or used in the literary, benevolent, charitable or scientific work carried on by such institutions." In *Willamette Univ. v. Tax Com.*, 245 Or 342, 349, 422 P2d 260 (1966), the Oregon Supreme Court, concluding that a building under construction qualified for a charitable exemption, held that the phrase "'actually occupied and used' pertains to whether or not the premises are then being prepared to carry out purposes of the exempt charity." Here, one of Plaintiff's organizational purposes is to acquire property. As a result, by Plaintiff simply acquiring the property, it is carrying out its exempt purpose. The court finds, therefore, that under the facts of this case, acquiring bare land qualifies the properties for exemption because acquiring property is a necessary part of Plaintiff's charitable activities.

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## CONCLUSION

Given the organizational purpose of Plaintiff and the fact that acquiring property is an essential component of its charitable work, the court finds the subject properties

should be granted exemption from taxation. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's Motion for Summary Judgment is granted; and

IT IS FURTHER DECIDED that the property identified in Defendant's records as Account Nos. R328007, R102214, and R102618 were exempt for the 2001-02 tax year under the provisions of ORS 307.130; and

IT IS FURTHER DECIDED that Defendant shall correct the assessment and tax rolls to reflect the exempt status of the properties. Any refund due following this correction shall be promptly paid with statutory interest pursuant to ORS 311.806 and ORS 311.812.

Dated this \_\_\_\_\_ day of January, 2003.

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COYREEN R. WEIDNER  
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 COYREEN R. WEIDNER ON JANUARY 30, 2003. THE COURT FILED THIS DOCUMENT ON JANUARY 30, 2003.**