

12-2784
TAX TYPE: PROPERTY
TAX YEAR: 2012
DATE SIGNED: 6-27-13
COMMISSIONERS: B. JOHNSON, D. DIXON, M. CRAGUN, R. PERO
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER</p> <p>Petitioner,</p> <p>v.</p> <p>BOARD OF EQUALIZATION OF (X) COUNTY, UTAH,</p> <p>Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 12-2784</p> <p>Parcel Nos. #####</p> <p>Tax Type: Property Tax/Exemption</p> <p>Tax Year: 2012</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE, Principal, ORGANIZATION REMOVED

For Respondent: RESPONDENT REPRESENTATIVE, Deputy Salt Lake District Attorney

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization pursuant to Utah Code Sec. 59-2-1006. This matter was argued in an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on April 18, 2013. Petitioner (the "Property Owner") is appealing the County Board of Equalization's (the "County") decision to deny a property tax exemption for a portion of the subject parcel for the 2012 tax year. This parcel was ##### acres in size and improved with a building, paved parking area and some landscaping. The County did allow the exemption for the building, land used for the paved parking area and any landscaped portion. The County denied the exemption to ##### acres of this property. The Property Owner appealed the denial of the exemption to this portion of the property.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (Utah Code Sec. 59-2-103 (1).)

Utah Code Sec. 59-2-1101(3) provides that certain properties are exempt from property tax as follows:

The following property is exempt from taxation:

* * *

(d) property owned by a nonprofit entity which is used exclusively for religious, charitable or educational purposes;

* * *

Utah Admin. Rule R884-24P-40 (C) provides further clarification when vacant land is deemed to be used exclusively for religious purposes as follows:

Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

A party may appeal the County Board of Equalization's decision regarding an exemption to the Utah State Tax Commission as provided in Utah Code Sec. 59-2-1006 as follows:

Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board

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DISCUSSION

There are two criteria for the requested exemption, first that the property be owned by a nonprofit entity and second that it is used exclusively for religious, charitable, or educational purposes. See Utah Code Sec. 59-2-1101(3). There was no dispute that the first criterion was met. The Property Owner has a 501(c) nonprofit designation. The Property Owner acquired the property in MONTH, YEAR, spent some \$\$\$\$\$ in costs to renovate and convert the building to

high school and an early child development center. The renovations were finished by MONTH, YEAR, and both the high school and early child development center are operating at the property. The County did allow the exemption for 2012 for most of the ##### acre parcel and for all of the building, parking and landscaped areas. They disallowed the back ##### acres of this parcel as the County felt that this portion was not being exclusively used for educational purposes. It was the County's contention when disallowing the exemption that this ##### acre portion was overgrown with weeds and there was no physical evidence that it was being actively used for any purposes. The Property Owner has plans to develop these ##### acres into athletic fields. The County points to Utah Rule R. R884-24P-40(c) which clarifies that vacant land held for future development is not exempt.

At the hearing the representative for the Property Owner explained that although they have not yet landscaped this back portion, there were uses of this portion for the high school and early child development center and there were some improvements on this portion of the property from the prior owner. At one point the property had been a nursery. The nursery had paved a portion of this area in patio bricks. They had installed decorative lamp posts and lamps all around this ##### acres, there were electrical outlets and irrigation. The representative stated that the nursery used the paved area as a space to play and ride tricycles. He also indicated that they had built a sand box in this area in which the children play. The representative stated that the high school used the area as part of their physical education classes. In addition there was a gravel service road across the back of this portion of property. The representative stated that they used the gravel road to access the building.

The representative for the County pointed out that pursuant to Utah Code Sec. 59-2-1101(3) in order to qualify for the exemption the property must be used exclusively for religious purposes. He noted that in *Corporation of the Episcopal Church v. Utah State Tax Comm'n*, 919 P.2d 556 (1996) the Utah Supreme Court had concluded that property held by a church for future development was not being used for religious purposes. In that case, the property was vacant parcels of land adjacent to the Episcopal Church. However, in that case the property was used for outdoor religious services for about 2 hours per year. The Court disallowed the exemption indicating that for most of the year the use of the property was to hold for future development.

The County also points to Utah Admin. Rule R884-24P-40(c) which clarifies the use of vacant land. The rule at Subsection (C) states, "Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes." And the rule further clarifies that vacant land held for future development is not exempt, but once

construction commences or a building permit is issued for construction of a structure or other improvement the land could be considered exempt. The County's representative did acknowledge that when the Board of Equalization denied the exemption it was not aware of any uses for this portion of the property or improvements on this property. The County also acknowledged that this situation was different in that this was on a single parcel which did contain the school and the County had allowed the exemption for most of the parcel as well as the building.

Upon review of the information presented at the hearing, there is clearly more use of the subject property than the two hour service once per year as occurred in the Episcopal Church decision. The situation in this appeal is similar to the *Findings of Fact, Conclusions of Law and Final Decision* issued by the Tax Commission in *Appeal No. 10-2029* (December 2012).¹ There are uses of the ##### acre portion of the subject parcel that support the school operating on the rest of the subject parcel, even though the planned future development on the ##### acres has not been completed. In *Appeal No. 10-2029* the parcel under contention was land owned by and adjacent to a church. A portion was paved for parking and landscaped but a portion of the parcel was an unimproved piece of land. The County had allowed the exemption as used for religious purposes for the paved and landscaped portion as well as the adjacent parcel where the church was located. The County had disallowed the exemption for the portion of the parcel that was vacant land with no improvements. The Commission concluded in that case that some of this vacant and unpaved portion was clearly used for overflow parking for the church as there were not enough paved parking spaces, and there was evidence of parking on the dirt portion of the property. Additionally all the land had been used for youth activities and annual religious camps. The church had intentions at some time in the future to build a CENTER on the property when they could raise the funds. In its decision in *Appeal No. 10-2029*, the Commission did allow the exemption for the whole parcel based on the accumulation or aggregate of all the activities for which the church community used the property.

In the subject appeal, the County agrees that a large portion of the single parcel of property is exempt because it is owned by a nonprofit and used for educational purposes. There are some uses in conjunction with the educational purpose or recreation of the students and accessing the back service door of the building. There are some improvements to the property, IMPROVEMENTS which may be used in turning this portion into athletic fields. The Commission should allow the exemption for the entire parcel of property at issue.

¹ This decision as well as many other prior Tax Commission decisions are available for review in a redacted format at tax.utah.gov/commission-office/decisions.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based upon the foregoing, the Tax Commission extends the property tax exemption under Utah Code Sec. 59-2-1101(3) to the entirety of Parcel #####. The County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2013.

R. Bruce Johnson
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner